



DEPARTMENT OF EDUCATION

34 CFR Chapter II

RIN 1801-AA24

Final Requirements; American Rescue Plan Act Homeless  
Children and Youth Program

AGENCY: Office of Elementary and Secondary Education,  
Department of Education.

ACTION: Final requirements.

SUMMARY: The Department of Education (Department)  
establishes requirements for the Homeless Children and  
Youth program (ARP-HCY), under section 2001(b)(1) of the  
American Rescue Plan Act of 2021 (ARP Act). These  
requirements are intended to clarify program requirements  
and streamline and clarify the process for State  
educational agencies (SEAs) to award subgrants to local  
educational agencies (LEAs).

DATES: These final requirements take effect [INSERT DATE  
OF PUBLICATION IN THE FEDERAL REGISTER].

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(TDD) or a text telephone (TTY), call the Federal Relay  
Service (FRS), toll free, at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

Purpose of Program: The ARP-HCY program provides a total of \$800 million for the Secretary of Education (Secretary) to use for the purposes of identifying homeless children and youth and providing homeless children and youth with wrap-around services in light of the challenges of the COVID-19 pandemic and assistance needed to enable homeless children and youth to attend school and participate fully in school activities. These funds may be used by States to address urgent needs of children and youth experiencing homelessness—including academic, social, emotional, and mental health needs. The funds will also be used by States and local educational agencies (LEAs) to increase capacity by hiring staff, dedicating resources, and planning partnerships with community-based organizations, among other strategies.

Program Authority: Section 2001(b)(1) of the ARP Act, Public Law 117-2, March 11, 2021.

Background: The ARP-HCY program provides \$800 million to fund vital assistance to homeless children and youth. On April 26, 2021, the Department released approximately 25 percent of these funds (ARP Homeless I) as a supplement to SEAs' grants under the Education for Homeless Children and Youths (EHCY) program authorized by Title VII-B of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act). SEAs and LEAs may use ARP Homeless I funds for a

wide range of services and activities, including tutoring, transportation, coordination with housing, health and social services, counseling, and other supports for academic, social, emotional, and mental health needs, to address the urgent needs of homeless children and youth. Funds may also be used to build SEA and LEA capacity to effectively administer these funds. SEAs were encouraged to use the initial disbursement of funds to supplement existing EHCY grants, and many have done so or are in the process of doing so.

The Secretary is establishing final requirements for the second disbursement of ARP-HCY funds (ARP Homeless II) related to program requirements and the formula for the SEAs' distribution of these funds to LEAs.

In paragraph (a) of the final requirements, the Department provides that the requirements apply to an SEA's ARP Homeless II allocation.

Paragraph (b) provides that the funds are subject to all provisions of Title VII-B of the McKinney-Vento Act, except as provided in paragraph (c), which governs subgrants to LEAs. The Department establishes this requirement because the EHCY program supports an existing infrastructure of State Coordinators in States and local liaisons in LEAs. Furthermore, the allowable activities under this program are broadly defined and meet a wide range of academic, social, emotional, and mental health

needs of children and youth experiencing homelessness. Creating a program with different requirements and a different infrastructure is likely to result in confusion and duplication of efforts, at a time when students urgently need support.

Paragraph (c) of the requirements contains a formula for the SEAs' distribution of funds to LEAs from the funds remaining after the SEA State activities reservation (which may be up to 25 percent of the SEA's award, consistent with section 722(e)(2) of the McKinney-Vento Act). The McKinney-Vento Act includes a statutory requirement that States distribute at least 75 percent of funds to LEAs. It also requires SEAs to award these funds competitively to LEAs using criteria based on need and quality. This requirement ensures that the limited EHCY program funds that have historically been appropriated under this program are distributed to the LEAs with the greatest need but has also resulted in only approximately 25 percent of LEAs receiving EHCY subgrants. Given the substantial increase in funding for supports and services for homeless children and youth under the ARP Act, the need for rapid distribution to meet urgent student needs, and the importance of serving students experiencing homelessness in communities that have not historically participated in the EHCY subgrant program, the Department establishes a requirement in paragraph (c)(1) that the SEA distribute the

ARP Homeless II funds to LEAs by formula rather than competition. Requiring SEAs to distribute the ARP Homeless II funds to LEAs by formula will ensure that the vast majority of LEAs will be able to receive subgrants.

The formula is based equally on the proportional share of an LEA's allocation under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) for the most recent fiscal year, and the LEA's proportional share of the number of homeless children and youth identified by each LEA relative to all LEAs in the State, using the greater of the number of homeless children and youth in either the 2018-19 or 2019-20 school year in each LEA. This formula ensures a balance in the distribution of funds to focus on the needs of the LEAs, considering both the LEA's number of low-income students and the number of homeless children and youth. In addition, allowing the use of either the 2018-19 school year or 2019-20 school year homeless counts takes into consideration the potential for undercounting in the 2019-20 school year due to COVID-19 by allowing LEAs to use the greater of the two numbers.

The Department establishes in paragraph (c)(2) that an LEA must have an allocation of at least \$5,000 under the formula to be eligible for an ARP Homeless II subgrant on its own. This \$5,000 minimum will enable each subgrantee to have sufficient ARP Homeless II funds to address the needs of homeless children and youth. We chose as the

threshold the smallest amount reasonable to sufficiently implement a local program. If an LEA's allocation would be less than \$5,000, in order to receive an ARP Homeless II subgrant, the LEA must join a consortium of LEAs in which the sum of its members' allocations meets the \$5,000 threshold. For LEAs with an allocation less than \$5,000, the rule encourages the use of consortia to create favorable economies of scale.

FINAL REQUIREMENTS: The Secretary establishes the following final requirements for the ARP-HCY program.

(a) Applicability. These requirements apply to a State educational agency's (SEA) second allocation of funds from the Department of Education under section 2001(b)(1) of the American Rescue Plan Act of 2021 (ARP Homeless II).

(b) Program administration. The funds described in paragraph (a) are subject to all provisions of Title VII-B of the McKinney-Vento Homeless Assistance Act, except as provided in paragraph (c).

(c) Subgrants to local educational agencies (LEAs).

(1) Each SEA must award subgrants by allocating not less than 75 percent of the funds it receives under the ARP Homeless II program to LEAs as follows:

(i) 50 percent in proportion to the amount that each LEA received under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended, for the most recent fiscal year; and

(ii) 50 percent in proportion to the number of homeless children and youth identified by each LEA relative to all LEAs in the State, using the greater of the number of homeless children and youth in either the 2018-19 or 2019-20 school year in each LEA.

(2) An SEA may not make a subgrant to an LEA under paragraph (c)(1) if the amount of such subgrant would be less than \$5,000. An LEA that does not meet this minimum allocation requirement may receive a subgrant only as part of a consortium with other LEAs if the total of their combined allocations is at least \$5,000.

(3) For the purpose of paragraph (c), a consortium means a subgrantee that consists of more than one LEA.

Waiver of Notice and Comment Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed requirements. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Here, there is good cause to waive notice and comment rulemaking due to the urgent needs of children and youth experiencing homelessness in light of the national pandemic, as going through the full

rulemaking process would delay the awarding of these grants to SEAs and LEAs.

The good cause exception is appropriate "in emergency situations or where delay could result in serious harm." *See Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (internal citations omitted). "The public interest prong of the good cause exception to the APA notice and comment requirement is met only in the rare circumstance when ordinary procedures--generally presumed to serve the public interest--would in fact harm that interest." *Mack Trucks Inc. v. E.P.A.*, 682 F.3d 87, 95 (D.C. Cir. 2012).

The ARP-HCY funds are intended to support the specific and urgent needs of homeless children and youth due to the extraordinary impact of the pandemic on students experiencing homelessness, including reduced identification of such students, decreased enrollment in school, interrupted classroom instruction, and challenges navigating services for shelter/housing, clothing and school supplies, food, and child care. Due to the emergency nature of this situation, there is not time for public notice and comment. By establishing these requirements now, SEAs and LEAs may more quickly and effectively plan for and use ARP-HCY funds to address the needs of homeless children and youth. Establishing the final rule now will give SEAs the opportunity to award ARP Homeless II funds to LEAs by the start of the 2021-22



school year (which can be early August in some States). During the school closures following March 2020, many students experiencing homelessness became disengaged, stopped attending regularly or submitting assignments, became chronically absent, or dropped out. Those students will need intensive educationally related support services beginning from the first day of the new school year. A delay of even two months to the final requirement and disbursement of funds for ARP Homeless II will prolong the interruptions in learning for hundreds of thousands of students experiencing homelessness during the pandemic. The beginning of the school year is a critical time for identifying and connecting students experiencing homelessness to remediation and support services. For example, if funds are not awarded to LEAs before September, it will be difficult for schools to place students who are identified as experiencing homelessness in classes at the appropriate grade level, delaying access to critical support services and prolonging interruption in learning caused by the pandemic.

The APA also requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). As discussed above, because the ARP-HCY funds are needed to address the immediate needs of homeless children and youth, the Secretary also has good

cause to waive the 30-day delay in the effective date of these requirements under 5 U.S.C. 553(d) (3).

#### Executive Orders 12866 and 13563

#### Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as a "major rule," as defined by 5 U.S.C. 804(2).

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

- (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

- (2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

- (3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

The Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and we are issuing these final requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, the Department believes that the final

requirements are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, and net budget impacts. The main benefit of this regulatory action is that funded services will get to more students identified as homeless in more LEAs more quickly in order to support them and address the impact of lost instructional time and the other impacts of the pandemic and virtual instruction. The estimated costs and net budget impacts are described below.

Elsewhere, under the Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

#### Need for Regulatory Action and Analysis of Benefits

These final requirements are intended to expedite the award of emergency funds to serve homeless children and youth. As discussed elsewhere in this document, the ARP-HCY program provides vital emergency funding to one of the most vulnerable populations. The Department believes this regulatory action is needed to ensure that SEAs can allocate funds to LEAs in a time-effective manner so that

LEAs can begin serving homeless children and youth. Requiring SEAs to make LEA subgrants by formula allows funds to reach more LEAs, and therefore more students experiencing homelessness. These funds will support the work of the designated Homeless Liaison in each LEA, as required by the McKinney-Vento Act, and build capacity in LEAs, which will help to identify greater numbers of students experiencing homelessness and better coordinate services for those students in LEAs receiving funding through this formula. In addition, the funding under ARP is more than seven times greater than the usual appropriation for this program. This onetime emergency appropriation provides a unique opportunity to make funds more widely available than would be possible with the current appropriation of \$106.5 million for the Education for Homeless Children and Youth program under the McKinney-Vento Homeless Assistance Act.

The alternative, requiring SEAs to conduct competitions before making awards, would place an additional burden on SEAs and LEAs, increase the time needed to distribute funds, and result in fewer LEAs receiving funds. At the SEA level, a typical competition may take three to six months and requires developing selection criteria, publishing those criteria, providing technical assistance and allowing time for LEAs to develop applications, recruiting and training reviewers, reviewing

the applications, and making awards. In addition to the staff time needed to conduct a fair and transparent competition, other expenses may include compensation for reviewers and logistical support for the review process. At the LEA level, costs are incurred in the time needed to develop an application, including identifying and collaborating with partners, and the administrative processes needed to complete the application and obtain approval for submission. Some LEAs, even those with high need, will decline to apply for competitive grants due to these costs and the uncertainty of receiving a grant. In contrast, SEAs already have access to the data and expertise required to run the proposed allocations formula as well as to systems to award the funding to LEAs, as they already administer other Federal formula programs.

We estimate that running a State-level grant competition will take four to six months, and hundreds of staff hours, depending on the number of LEAs in the State who apply for a grant. However, awarding subgrants via a formula would take on average 10-20 hours, with an additional one to two weeks for outreach and technical assistance. At the LEA level, applying for a competitive subgrant could take two weeks to develop and finalize an application; a formula subgrant might take up to 10 hours.

In both scenarios, the reporting burden from the SEA to the Department is small, since the only new information the

Department expects to collect is a list of grantees for ARP Homeless I and II disbursements. The Department already collects data from all LEAs in each State for homeless children and youth, whether they receive a McKinney-Vento subgrant or not.

#### Analysis of Costs

The Department's cost analysis shows that making subgrants by formula is a less costly option overall. As discussed in the previous section, carrying out a competition is a complex, multistep process that occurs over months. The Department estimates that it would take an SEA between 160 to 320 hours to conduct a competition, at an approximate cost of \$707,000 to \$1,415,000 for 49 SEAs. (SEAs that consist of only one LEA would not need to carry out a competition.) The cost estimates in this section are based on an hourly wage of \$45.11, the mean wage estimate for education administrators, other, reported by the U.S. Bureau of Labor Statistics, which is multiplied by two to account for overhead and benefits.

In addition, we estimate that LEAs applying for grants under a competition would need 80 to 100 hours to prepare an application. Because more funding is available under the ARP than under the regular appropriation for the Education for Homeless Children and Youth program, we estimate that more LEAs would apply and receive subgrants than the 4,400 that currently receive subgrants, and the



cost estimate assumes that 5,000 LEAs would apply for funds. Using wages as described above, the estimated cost for applications for subgrants would be approximately \$36.1 million to \$45.1 million, and the total cost for distributing funds via a competition would be approximately \$36.8 million to \$46.5 million.

In order to distribute funds via formula the Department estimates that SEAs would need 10 to 15 hours to run the formula and distribute funds, and another 40 to 80 hours to conduct outreach to LEAs and help LEAs that would receive less than \$5,000 to create consortia with other LEAs. Using wages as described above, the estimated cost for 49 SEAs for these activities would be \$221,000 to \$420,000. The estimated cost for LEAs to receive subgrants assumes 5 to 10 hours to complete forms and minimal applications for formula funding. The estimate also assumes that approximately 15,000 LEAs would receive funding under the formula, far more than the 5,000 LEAs we estimate would receive funding under a competition for subgrants. The estimated costs to LEAs would be \$6.8 million to \$13.5 million, and the total estimated cost for distributing funds via formula would be \$7.0 million to \$14.0 million. Taking the mean of this range, the estimated cost for distributing funds via formula would be \$10.5 million.

Not only does distributing funds via formula present a less costly option, but it also provides several benefits over conducting a competition as discussed in other sections of this document. The main benefits are that formula distribution takes less time and would allow LEAs to receive funds when the school year starts. Furthermore, more LEAs would receive funding, allowing more students to receive services.

#### Net Budget Impacts

We estimate that the discretionary elements of the final requirements will not have an impact on the Federal budget. The requirements for SEAs and LEAs receiving ARP-HCY funds do not affect the amount of funding available for this program. We anticipate that \$799 million in ARP-HCY funds will be disbursed in 2021, and therefore estimate \$799 million in transfers in 2021 relative to a pre-statutory baseline.

#### Accounting Statement

As required by OMB Circular A-4, in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to SEAs under this program as a result of this regulatory action. Expenditures are classified as transfers to those entities.

Table--Accounting Statement Classification of Estimated Expenditures

Category	Costs	(in millions)
Annual Costs.....		\$10.5
Category	Transfers	(in millions)
Annual Monetized Transfers.....		\$799.0
From Whom to Whom.....	Federal Government to SEAs.	

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under the Administrative Procedure Act (5 U.S.C. 553).

Clarity of the Regulatory Action

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make this regulatory action easier to understand, including answers to questions such as the following:

- Are the requirements in the regulatory action clearly stated?
- Do the regulatory actions contain technical terms or other wording that interferes with their clarity?
- Does the format of the regulatory action (grouping and order of sections, use of headings, paragraphing, etc.)

aid or reduce their clarity?

- Would the regulatory action be easier to understand if we divided them into more (but shorter) sections?

- Could the description of the regulatory action in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the regulatory action easier to understand? If so, how?

- What else could we do to make the regulatory action easier to understand?

To send any comments that concern how the Department could make this regulatory action easier to understand, see the instructions in the ADDRESSES section.

#### Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 et seq.). This helps ensure that the public understands the Department's collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently-valid OMB control number.

As discussed in the Need for Regulatory Action and Analysis of Benefits section of the Regulatory Impact Statement, this final requirement that SEAs distribute the ARP Homeless II funds to LEAs by formula rather than competition will create burden hours and costs for both LEAs and SEAs. Below we estimate the annual burden hours and costs for LEAs to complete forms and minimal applications. In addition, the Department is requesting an ARP-HCY plan from each SEA. The burden hours and cost associated with completing and submitting the SEA ARP-HCY plan are estimated below. The cost estimates in this section are based on an hourly wage of \$45.11, the mean wage estimate for education administrators, other, reported by the U.S. Bureau of Labor Statistics, which is multiplied by two to account for overhead and benefits, for a total hourly wage estimate of \$90.22.

We estimate 7.5 burden hours for each of the approximately 15,000 LEAs to complete forms and minimal applications for formula funding. The total estimated costs to LEAs would be \$10,150,000 and the total estimated burden hours would be 112,500.

We estimate that one plan will be received from 52 SEAs. For the time to complete and submit the plan, we estimate that the number of burden hours per response will be 22 hours. The total estimated number of burden hours is 1,144 hours. At \$90.22 per hour, the total estimated cost for 52 SEAs to complete and submit the ARP-HCY plan approximately \$103,300.

Collectively, we estimate that these new information collection activities will result in a total estimated cost of \$10,253,300 and a total estimated burden of 113,644 hours to the public annually.

The Department is requesting an emergency paperwork clearance from OMB under 5 CFR 1320.13 on the data collection activities associated with these final requirements. That request will account for all burden hours and cost discussed within this section. As required by 5 CFR 1320.8(d), the Department is soliciting comments on the information collection. We must receive your comments on the collection activities contained in these final requirements on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL**

**REGISTER]**. Comments related to the information collection activities must be submitted electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) by selecting the Docket ID number ED-2021-OESE-xxx or via postal mail, commercial delivery, or hand delivery by referencing the Docket ID number and the title of the information collection request at the top of your comment. Comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave., SW, LBJ, Room 6W208D, Washington, DC 20202-8240.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments related to the information collection activities posted at [www.regulations.gov](http://www.regulations.gov).

#### Collection of Information

Information Collection Activity	Estimated Number Responses	Hours Per Response	Total Estimated Burden Hours	Estimated Cost at an Hourly Rate of \$90.22
LEA Completion of Forms and Applications to SEA	15,000	7.5	112,500	\$10,150,000
SEA ARP-HCY Plans	52	22	1,144	\$103,300
Annualized Total	15,052		113,644	\$10,253,300

#### Intergovernmental Review

The ARP-HCY program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Ian Rosenblum,  
*Deputy Assistant Secretary for  
Policy and Programs, Delegated the  
Authority to Perform the Functions  
and Duties of the Assistant  
Secretary, Office of Elementary  
and Secondary Education.*